

in the order we talked about, Senator WARNER; Senator ENSIGN on genetics, and I understand his pro bono amendment is being agreed to; and Senator THOMPSON, which I understand also has been agreed to.

Mr. THOMPSON. No.

Mr. GREGG. It has not. And then Senator FRIST has a substitute.

Is there anybody else who has an amendment?

That appears to be our list.

Mr. DASCHLE. Mr. President, I ask unanimous consent that be deemed as the finite list of amendments to be offered to this bill.

Mr. CRAIG. Reserving the right to object.

Mr. DASCHLE. Mr. President, is there an objection?

Mr. NICKLES. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I just tell the majority leader, we have not had a chance to run that by our colleagues. We have been shopping amendments, and the Senator from New Hampshire is to be congratulated that he has reduced the number of amendments substantially. We will need a few minutes at least to run this by the rest of our colleagues to make sure they know that if they have additional amendments to be considered, they need to get them on our list.

If the majority leader will please withhold the request, we will shop it around.

Mr. DASCHLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, while Senators are working out their amendments, I think there ought to be an Independence Day speech. I assume we are going home for the Fourth of July. So if there is no objection, I have a speech in hand. (Laughter.)

Mr. MCCAIN. Reserving the right to object. (Laughter.)

In admiration of the Senator's tie, how long is the speech?

Mr. BYRD. Well, now, in the face of that extraordinary compliment, I would say it is just half as long as it would have been otherwise. (Laughter.)

Mr. MCCAIN. No objection.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

INDEPENDENCE DAY

Mr. BYRD. Mr. President, the Senate will shortly recess, hopefully, for the Independence Day holiday. Many Mem-

bers will return home to meet with their constituents. Some will perform a time-honored ritual and take part in bunting-swagged Independence Day parades, sweating and waving from the backs of convertibles somewhere in the line-up between the pretty festival queens, brightly polished antique cars, flashing fire engines, and, hopefully, ahead of the prancing equestrian groups. It is an American tradition as familiar and as comforting as the fried chicken and the apple pie that everyone will enjoy. Families and friends will gather to watch the fireworks light the evening sky.

This first Independence Day of the new millennium calls to mind an earlier year two centuries ago. The year was 1801. Of course, then, as now, there had been a hotly contested election. Control of government passed from one party to another. It took a vote in the electoral college to decide the Presidency, and the House of Representatives put Thomas Jefferson into the White House instead of Aaron Burr.

Passions ran high and many strong words were uttered. Grudges were nursed, and we feel those same passions today, and with the recent change of party control in the Senate, some angry feelings have been fanned anew. It is, perhaps, a good time as we celebrate the 225th anniversary of our country's independence as a new nation, a new government created under God in as thoughtful and inspired a manner as man can devise, to recall these words from President Jefferson's inaugural address:

During the contest of opinion through which we have passed the animation of discussions and of exertions has sometimes worn an aspect which might impose on strangers unused to think freely and to speak and write what they think; but this being now decided by the voice of the Nation, announced according to the rules of the Constitution, all will, of course, arrange themselves under the will of the law, and unite in common efforts for the common good. All too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possesses their equal rights, which equal law must protect, and to violate would be oppression. Let us, then, fellow-citizens, unite with one heart and one mind. Let us restore to social intercourse that harmony and affection without which liberty and even life itself are but dreary things.

The language that came from Jefferson's inaugural speech may be archaic, but the message rings true through the ages and is contemporary still. It reminds us of the great luxury of our liberty—the freedom to say what we think and the ability to stand up for what we believe. It also reminds us of the need, then as now, to remember, protect, and preserve our liberty as our greatest common good. For that, we must stand together as a people united in, as Jefferson says later in his speech, “. . . The preservation of the general

government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad”

Americans are fortune's children. We are the lucky citizens of a great and novel experiment in government, the golden children of a 225-year-old alchemy that blended the best of all governmental forms into a wholly new metal, a grand representative government that has endured the trials of centuries. We enjoy power coupled with restraint; wealth with generosity; individual opportunity with concern for the less fortunate. Though at times it seems that we are consumed by petty squabbles or diverse interests that threaten to fragment us as a people, each year on the glorious Fourth of July we are given a chance to come together proudly as one American people, to honor, in Jefferson's words, “[T]he wisdom of our sages and the blood of our heroes . . .” that have been devoted to the principles embodied in our Constitution and our government.

This next Wednesday evening, as fireworks thunder over the Jefferson Memorial in Washington and are mirrored in the reflecting pond around it, patriotic strains will fill the air. Similar scenes will play out around the country. Whether in Washington or in small towns or medium-sized cities around the Nation, or in large cities, we may all be proud to be Americans first and foremost. Whatever other allegiances we might have, to party, church, state, or community, we are Americans first. Let us celebrate that and let us not forget it.

As you light your sparklers and fountains, as you hear the martial music of John Phillip Sousa, as you applaud the fireworks displays, as you eat the first sweet corn and tomatoes from the garden, look around you and feel proud. Be proud that 225 years ago, bold men risked their lives and their fortunes and their sacred honor to give us this wonderful system of States, this amazing governmental system, this land of the free, this home of the brave united as one nation under God and under the red, white, and blue flag of the United States of America. Feel glad that so many of your fellow citizens are standing at your shoulders watching the parade, or sitting nearby with their families looking up at the sky ablaze with man-made stars. In these crowds is our hope for a long future as a people united still under Old Glory, and under the Constitution of the United States.

Mr. President, Thomas Jefferson spoke of our constitutional government as the “sheet anchor” of our peace and safety. He chose his nautical allusion fittingly. A sheet anchor, according to the Merriam-Webster Dictionary, is a noun that first appeared in the 15th Century. It is a large, strong anchor formerly carried in the waist of a ship and used as a spare in an emergency, but the phrase has also

come to be used for something that constitutes a main support or dependence, especially in times of danger. Truly, then, the Constitution is not just the organizing construct of our government, but also, as Jefferson saw it, the tool by which our Nation would preserve our liberties. It is fitting, then, to close with the words of the poet Henry Wadsworth Longfellow, who wrote about the republic in "The Building of the Ship."

Thou, too, sail on, O Ship of State!
Sail on, O Union, strong and great!
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate!
We know what Master laid thy keel,
What Workmen wrought thy ribs of steel,
Who made each mast, and sail, and rope,
What anvils rang, what hammers beat,
In what a forge and what a heat
Were shaped the anchors of thy hope!
Fear not each sudden sound and shock,
'Tis but the wave and not the rock;
'Tis but the flapping of the sail,
And not a rent made by the gale!
In spite of rock and tempest's roar,
In spite of false lights from the shore,
Sail on, nor fear to breast the sea!
Our hearts, our hopes, are all with thee,
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee—are all with thee!

Mr. President, I yield the floor.
(Applause, Senators rising.)

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I certainly join my colleagues in expressing our warm appreciation for our senior colleague, our President pro tempore, for addressing the Senate in such a stirring manner. It lifts the hearts of all of us in this late hour on a Friday afternoon, which has, I guess, a degree of uncertainty as to the manner in which we are going to proceed.

BIPARTISAN PATIENT PROTECTION ACT—Continued

AMENDMENT NO. 833, AS FURTHER MODIFIED

Mr. WARNER. Mr. President, I have an amendment which has been pending. I send to the desk a modification of that amendment.

The PRESIDING OFFICER. Without objection, the amendment is modified.

The amendment (No. 833) as further modified, is as follows:

On page 154, between lines 2 and 3, insert the following:

"(11) LIMITATION ON ATTORNEYS' FEES.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding an attorney's fee, the amount of an attorney's contingency fee allowable for a cause of action brought pursuant to this subsection shall not exceed ⅓ of the total amount of the plaintiff's recovery (not including the reimbursement of actual out-of-pocket expenses of the attorney).

"(B) DETERMINATION BY DISTRICT COURT.—The last Federal district court in which the action was pending upon the final disposi-

tion, including all appeals, of the action shall have jurisdiction to review the attorney's fee in accordance with subparagraph (C) to ensure that the fee is a reasonable one and may decrease the amount of the fee in accordance with subparagraph (C).

"(C) DETERMINATION OF REASONABLENESS OF FEE.—

"(i) INITIAL DETERMINATION OF LODestar ESTIMATE.—

"(I) IN GENERAL.—To determine whether the attorney's fee is a reasonable one, the court first shall, with respect to each attorney representing the plaintiff in the cause of action, multiply the number of hours determined under subclause (II) by the hourly rate determined under subclause (III).

"(II) NUMBER OF HOURS.—The court shall determine the number of hours reasonably expended by each such attorney.

"(III) HOURLY RATE.—The court shall determine a reasonable hourly rate for each such attorney, taking into consideration the actual fee that would be charged by each such attorney and what the court determines is the prevailing rate for other similarly situated attorneys.

"(ii) CONSIDERATION OF OTHER FACTORS.—A court may increase or decrease the product determined under clause (i) by taking into consideration any or all of the following factors:

"(I) The time and labor involved.

"(II) The novelty and difficulty of the questions involved.

"(III) The skill required to perform the legal service properly.

"(IV) The preclusion of other employment of the attorney due to the acceptance of the case.

"(V) The customary fee of the attorney.

"(VI) Whether the original fee arrangement is a fixed or contingent fee arrangement.

"(VII) The time limitations imposed by the attorney's client on the circumstances of the representation.

"(VIII) The amount of damages sought in the cause of action and the amount recovered.

"(IX) The experience, reputation, and ability of the attorney.

"(X) The undesirability of the case.

"(XI) The nature and length of the attorney's professional relationship with the client.

"(XII) The amounts recovered and attorneys' fees awarded in similar cases.

"(D) RARE, EXTRAORDINARY CIRCUMSTANCES.—Notwithstanding subparagraph (A), in rare, extraordinary circumstances, the court may raise the attorney's fee above the ⅓ cap imposed under subparagraph (A) to ensure a balance of equity and fairness to both the attorney and the plaintiff.

On page 170, between lines 21 and 22, insert the following:

"(9) LIMITATION ON ATTORNEYS' FEES.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding an attorney's fee, subject to subparagraphs (C), (D), and (E), the amount of an attorney's contingency fee allowable for a cause of action brought under paragraph (1) shall not exceed ⅓ of the total amount of the plaintiff's recovery (not including the reimbursement of actual out-of-pocket expenses of the attorney).

"(B) DETERMINATION BY COURT.—The last court in which the action was pending upon the final disposition, including all appeals, of the action may review the attorney's fee to

ensure that the fee is a reasonable one. In determining whether a fee is reasonable, the court may use the reasonableness factors set forth in section 502(n)(11)(C).

"(C) EQUITABLE DISCRETION.—A court in its discretion may decrease the amount of an attorney's fee determined under this paragraph as equity and the interests of justice may require.

"(D) RARE, EXTRAORDINARY CIRCUMSTANCES.—Notwithstanding subparagraph (A), in rare, extraordinary circumstances, the court may raise the attorney's fee above the ⅓ cap imposed under subparagraph (A) to ensure a balance of equity and fairness to both the attorney and the plaintiff.

"(E) NO PREEMPTION OF STATE LAW.—Subparagraph (A) shall not apply with respect to a cause of action under paragraph (1) that is brought in a State that has a law or framework of laws with respect to the amount of an attorney's contingency fee that may be incurred for the representation of a participant or beneficiary (or the estate of such participant or beneficiary) who brings such a cause of action.

Mr. WARNER. Mr. President, I want to comply with the wishes of the distinguished leaders.

Mr. DASCHLE. Mr. President, may we have order.

The PRESIDING OFFICER. The Senate is not in order. The Senate will suspend. Please take your conversations off the floor.

Mr. WARNER. Mr. President, I wish to accommodate the managers, but I am ready to proceed. I think I can describe my amendment in about 10 or 15 minutes or less. I urge colleagues to accept that offer to move ahead and give equal time to each side.

Mr. REID. I am sorry, I say to my friend, the distinguished Senator from Virginia, we have had trouble hearing over here.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Virginia is entitled to be heard.

The Senator from Virginia.

Mr. WARNER. I say to my good friend, the distinguished majority whip, I am seeking now to address my amendment. It has been pending for some several days. I am perfectly willing to enter into a time agreement. I need but, say, 15 minutes.

Mr. REID. Say 30 minutes evenly divided?

Mr. WARNER. I am quite agreeable to 30 minutes equally divided.

Mr. REID. Our anticipation now—we will work this out, speaking with the managers of the bill—is to offer side by side with yours, or second degree, whatever your manager wishes to do, but you should go ahead and proceed. We are available during our 15 minutes to respond.

Mr. WARNER. Mr. President, might I have clarification? If I understand it on the second-degree, in the event it seems we need some adjustment in the time agreement with which to address that—

Mr. REID. Why not take an hour evenly divided, and if we don't need it, we will yield back the time?